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15 Association of Nevada-Wackenhut
16 Services Incorporated Pension Trust Fund

17 **UNITED STATES DISTRICT COURT**

18 **DISTRICT OF NEVADA**

19 Retired Independent Guards) Case No.: 2:08-cv-00849-RLH-LRL
20 Association of Nevada; et al.)
21)
22 Plaintiffs,)
23)
24 vs.)
25)
26 Board of Trustees, Independent)
27 Guards Association of Nevada –)
28 Wackenhut Services Incorporated)
29 Pension Trust Fund; et al.)
30)
31)
32 Defendant(s))
33)
34)

35 Defendant, Board of Trustees, Independent Guards Association of Nevada –
36 Wackenhut Services Incorporated Pension Trust Fund (hereafter “The Board”) by and
37 through its counsel, Fisher & Phillips LLP, moves pursuant to this Court’s July 8, 2011
38 Order [dkt 154] Scheduling a Settlement Conference for an order excusing the physical
39 attendance at the Settlement Conference of Sean Kiernan, the insurance representative
40 for Traveler’s Insurance Company, which provides a policy of insurance, including
41 costs of defense and potential indemnity to The Board related to this action.

1 Mr. Kiernan works and lives in New York City, New York and is handling over
2 160 other active matters. His physical attendance would disrupt his ability to
3 effectively handle those cases. Moreover, personal appearance would require two full
4 days of cross country travel with associated expenses, unnecessarily increasing the
5 already significant costs of defense of this litigation. The Board submits that Mr.
6 Kiernan's physical attendance is unnecessary because Defendant will have formulated a
7 settlement position prior to the Settlement Conference and Mr. Kiernan will be
8 available by telephone during the Settlement Conference to modify that position if
9 necessary. Finally, The Board will be personally represented at the Conference by one
or more of its Trustees and legal representatives.

10 Additionally, Plaintiffs have failed to tender a demand for settlement at any
11 time during this litigation. Moreover, as briefed in its pending Motion for Summary
12 Judgment [dkt 157] the only claim for which The Board bears any potential liability,
13 (the Fourth Cause of Action), which relates to an alleged failure to timely provide a
14 Summary Plan Description as required by ERISA, does not provide for any monetary
15 damages or remedies. The only other remaining cause of action, (the Third Cause of
16 Action), relates to an alleged failure to provide timely Annual Funding Notices, a
17 function of co-defendant BAC. As briefed in the pending motions, both claims are
defective as a matter of law because all statutorily required mailings were timely made.

18 Respectfully submitted this 7th day of September, 2011.

19 FISHER & PHILLIPS LLP

20 By: /s/ Whitney J. Selert, Esq.

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Association of Nevada-Wackenhut
Services Incorporated Pension Trust
Fund

25 IT IS SO ORDERED.

W. Kiernan

26 UNITED STATES MAGISTRATE JUDGE
27 DATED: 9-8-11

28

29

CERTIFICATE OF ELECTRONIC SERVICE

This is to certify that on the 7th day of September, 2011, the undersigned, an employee of Fisher & Phillips LLP, electronically filed the foregoing **MOTION FOR WAIVER OF ATTENDANCE OF INSURANCE REPRESENTATIVE AT SETTLEMENT CONFERENCE** with the U.S. District Court, and a copy was electronically transmitted from the court to the e-mail address on file for:

Athan T. Tsimpedes, Esq.
Larry C. Johns, Esq.
Paul Trimmer, Esq.
Rene Thorne, Esq.
Jason Stein, Esq.
Ashley Abel, Esq.

By: /s/ Lorraine James-Newman
An employee of FISHER & PHILLIPS LLP

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